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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,966	09/30/2003	Frederick M. Discenzo	01AB175C/ALBRP246USC	4946

7590 12/23/2008
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EXAMINER

ORTIZ RODRIGUEZ, CARLOS R

ART UNIT	PAPER NUMBER
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2123

MAIL DATE	DELIVERY MODE
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12/23/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/674,966</p>	<p>Applicant(s) DISCENZO ET AL.</p>	
	<p>Examiner CARLOS ORTIZ RODRIGUEZ</p>	<p>Art Unit 2123</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 November 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-10,12-17 and 19-49.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

/Paul L Rodriguez/
Supervisory Patent Examiner, Art Unit 2123

Carlos Ortiz-Rodriguez
Examiner
Art Unit: 2123

Continuation of 13. Other:

Please note that the amendment to claims 13, 14 and 21 have been entered because they are in response to a claim objection presented in the Final Office Action and they do not change the scope of the claims. The amendment to claim 38 also has been entered because it clarifies where the processes are running but since the scope of the claim did not change the rejections to claim 38 present in the Final Office Action are maintained.

Applicant's arguments filed 11/17/08 have been fully considered but they are not persuasive.

Regarding the rejection of Claim 38 under 35 U.S.C. 101 Applicant's arguments indicate that "In view of the amendment to the subject claim, this rejection of claim 38 should be withdrawn" (see Applicant's arguments on Page 11). Please note that claim 38 was amended in a manner that further defines the environment where the computer processes are being performed but does not overcome the rejection under 35 U.S.C. 101 to claim 38 because claim 38 is claiming "a data packet" that comprises a "data field" and as indicated in the Final rejection "whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title." Please note that a "data packet" is being considered as "a group of information transmitted". "A data packet" is not a process, machine, manufacture, or composition of matter, or any new and useful improvement thereof. If the Applicant intention is to claim a method than the preamble of the claim must be amended to properly provide for a method and the body of the claim must be amended to include the method steps involved in transmitting this data packet and additionally the body of the claim must positively recite the particular apparatus performing the method steps. If the Applicant intention is to claim a system, than the preamble of the claim must be amended to properly provide for a system and the body of the claim must include system elements that will structurally define the system.

Regarding the rejection of Claim 38 under 35 U.S.C. 102(e) Applicant's arguments indicate that in the Final Office Action "it is erroneously asserted that Bryant teaches a data field comprising information that regulates operation of a business component based at least upon prognostic data derived by a classifier performing a probabilistic analysis for future state of at least a subset of the operations concerning a machine" (see Applicant's arguments on Page 12 Lines 9-12). Please note that Bryant discloses transmitting data packets (Paragraph 0092-0093 and 0125-0132, see for example transmitting and receiving information over a communications channel). It should be noted that data packets are being interpreted as a group of information transmitted and that packets comprise an area that identifies the destination of the packet and data fields/areas that contain information. The information within the packet may vary depending on the purpose of the message being sent. Furthermore, Bryant discloses a classifier/algorithm/model that performs probabilistic analysis (Paragraph 0107). In this art, a probabilistic analysis is performed from historic/collected data in order to formulate equations/models that predict future events/states.

Regarding the rejection of Claims 1-10, 12-17, 19-37 and 39-49 under 35 U.S.C. 103(a) Applicant's arguments indicate that in the Final Office Action "it is erroneously asserted that Bryant teaches selecting a desired operating point within an allowable range of operation about a system set point according to performance characteristics associated with at least one of the machines (see Applicant's arguments On Page 12 Lines 24-26). Please note that Bryant discloses selecting an operating point associated with the machines that corresponds to the desired precision (Paragraph 0119-0120). It should be noted that it is known in this art that in order to control a system properly control engineers/designers select operating points within an allowable range of operation about a system set point according to performance characteristics associated with the machine being controlled. An allowable range of operation and characteristics of the machine being controlled are fundamental factors taking into consideration when trying to obtain a steady-state operating point.

Furthermore, on Page 14 Lines 16-20 Applicant's arguments indicate that in the Final Office Action ", it is erroneously asserted that Gotou et al. substantially teaches the prognostics engine comprising a plurality of intelligent software agents that serve as proxies for at least the subset of machines, for modeling and representing interactions with one another, and for facilitating convergence on modification and control of the subset of machines, for efficiently optimizing industrial business operations." In response to this argument, please note that Gotou is relied upon to show a diagnostic engine and not the prognostics engine. The Bryant reference is the one being relied upon to show teachings with respect to the prognostics aspect. Please see Page 22 of the Final Office Action for a complete and detailed explanation and reasoning on how the Gotou and the Bryant reference in combination teach the claimed invention.

On Page 15 Lines 27-31 Applicant's arguments further indicate that in the Final Office Action "it is erroneously asserted that Gotou et al. teaches an optimization component that selects" a desired operating point as an optimum performance point within an allowable range of operation about a system set point according to performance characteristics associated with at least one of the machines and controls" at least one machine according to the desired operating point, with respect to independent claim 1." Please note that Gotou discloses selecting a desired operating point (Paragraph 0026, see for example commanding setting and changing of the process set-up condition). It should be noted that it is known in this art that in order to control a system properly control engineers/designers select operating points within an allowable range of operation about a system set point according to performance characteristics associated with the machine being controlled. An allowable range of operation and characteristics of the machine being controlled are fundamental factors taking into consideration when trying to obtain a steady-state operating point.

